

CONSTITUTIONAL LAW: MIRANDA

ONLINE

PRESENTED BY:

DPS – Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

HOW CONSTITUTIONAL RIGHTS AFFECT INTERROGATION (MIRANDA ON-LINE)

GOALS

- Students will understand how constitutional rights – the 5th, 6th, and 14th amendments – affect an interrogation.
- Students will learn under what circumstances the Fifth Amendment requires Miranda warnings be given.
- Students will learn under what circumstances the Sixth Amendment requires the right to an attorney be honored in order to conduct a lawful interrogation.
- Students will learn what the Fourteenth Amendment requires for a statement to be voluntary.

OBJECTIVES

Upon completion of this course, students will be able to:

- Have an awareness of how constitutional rights influence an interrogation.
- **14th –Due process and fairness - the standard for a statement to be voluntary.**
- **5th - The right against self-incrimination.**
- 5th – Articulate what custodial interrogation means
- 5th - Explain the status of Miranda rights on a traffic stop.
- 5th - Explain the status of Miranda rights and juveniles.
- 5th - State when electronic recording is required for an interrogation.
- **6th - The right to an attorney.**
- 6th - State how the right to an attorney applies to a custodial interrogation.

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME

Included in two hour class on Constitutional Law.

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INTRODUCTION

One of the most important things that an officer does involves taking a statement. Knowing the legal guidelines – and they're not that difficult – will assist us in doing a better interrogation. These guidelines are found by reviewing three constitutional amendments, especially the Fifth Amendment and Miranda.

We will approach constitutional law and interrogation by looking at the following:

- The 14th amendment - Due process . . . the statement must be voluntary.
- The 5th amendment - Miranda decision comes from the Fifth Amendment.
- The 6th amendment - a discussion of the right to an attorney after being formally charged.

DEFINITIONS

Statements, Admissions, and Confessions - What's the difference?

A **statement**, oral or written, is when someone asserts something. An **admission** is when someone gives a statement that tends to incriminate him or her but is not enough to show guilt of a crime. A **confession** is more than an admission - it's a statement by a person that shows guilt of a crime.

What is due process?

The concept of due process generally requires that a person have adequate notice that particular conduct is prohibited, adequate notice that they have committed a violation of some rule, and an opportunity to be heard by the decision maker prior to adverse action.

In terms of statements, it means a statement, admission or confession must be voluntary.

A CONFESSION IS NOT ENOUGH

FACTS:

Struck by Huntington's disease, a fatal disease that includes dementia, a man in Rio Arriba County told his girlfriend that God was punishing him for improper touching of their two year old daughter. Later, he said the same things to a counselor and to police officers. No physical evidence existed but the daughter had nightmares and withdrew from strangers. He was found guilty of criminal sexual contact of a minor. State v. Weisser (2007).

- Is a confession alone sufficient to convict someone? (no)

ANSWER:

Court of Appeals overturned his conviction. A confession alone is not enough because of

the fear of a false confession. There must be independent proof – apart from the confession – that a crime occurred. The behavior of the two year old could have been from other factors

BE CAREFUL OF THE FALSE CONFESSION

Albuquerque Journal, June 28, 2008

In Albuquerque, a mentally retarded young man falsely confessed to the brutal rape and murder of a young girl. She was eleven-years-old. Other than the confession, and the fact that he had been seen with her, there was little evidence he did it. He spent thirty two months in jail when DNA pointed to another person. He was released from jail.

- Why did he confess? A law professor, reviewing the transcript, said “This was like leading a child, the person was so suggestible,” . . . “he was . . . easily led . . . into accepting responsibility because he was eager to please.”
- Over 200 convicted felons have had their convictions overturned in recent years because of DNA. False confessions were the primary factor in nearly one fourth of the convictions.
- People make false confessions for a number of reasons: coercion, mental illness, etc.

Albuquerque Journal, July 2, 2008

People in Albuquerque were upset. From the editorial page:

- “It’s sickening such an injustice was done to 22-year-old Robert Gonzales. It’s terrifying that he could have been wrongly convicted. It’s maddening that the man now faced with the crime almost got away.”
- “This case cries out for review of how police interrogate suspects, especially the young and mentally retarded.”

News item: Lawyer says it never had to happen

The City of Albuquerque is paying **\$1.3 million** to Robert Gonzales. His attorney said, “Nobody did any investigation once they had the ‘confession.’ They’re just adamant that if somebody ‘confesses,’ then you did it.”

An expert in false confessions said they often occur during questioning when the questioner supplies key facts to the suspect, who then repeats them. Another person confessed to the homicide. The new confession was corroborated. The state paid **\$45,000** for the District Attorney’s Office for malicious prosecution. Albuquerque Journal, August 14, 2010.

Another false confession . . .

News item: DA Drops Murder Charges Against 2

Two men were released after spending fifteen months in jail for a false confession. One had confessed to the murder of an elderly Korean couple in Albuquerque. DNA collected from under the victim's fingernails was matched to a career criminal in prison for another homicide. He confessed to the murders. Albuquerque Journal, March 12, 2009.

News item: Albuquerque to Pay \$950K in Yi Murders

The city of Albuquerque has agreed to pay **\$950,000** to the door-to-door magazine salesman who spent over a year in custody, and once faced a potential death penalty prosecution, for a December 2007 murder committed by another man.

A false confession by a co-worker who was questioned repeatedly by detectives – with information allegedly supplied by police during an interrogation – helped put them both in jail for 15 months. Albuquerque Journal, June 22, 2011.

Lessons learned

- Interrogation is a valuable tool but in these cases led to an unfortunate result. For APD, a highly regarded organization, this was a setback. As officers, we need to note the possibility of a false confession and how to avoid it. Interrogation of juveniles will be discussed later.

FOURTEENTH AMENDMENT: INTERROGATION - VOLUNTARY STATEMENT

INTRODUCTION

- An officer reads a suspect his Miranda rights. The suspect waives his Miranda rights and gives a confession. Before his statement can be admitted into evidence, however, the courts will ask a very basic question: was the statement or confession voluntary?
- Every statement, admission or confession must be voluntarily given. A confession given because police officers use coercion is inadmissible in court. Coercion is a broad term that includes fear, hope of reward, or an improper inducement. If the statement wasn't voluntary, all the Miranda warnings put together won't undo the damage.
- The Fourteenth Amendment provides for due process which means fairness. It is from due process that the idea that a statement must be voluntary comes from.
- The next few cases give an idea of what makes a statement voluntary or not.

In the following situation is the statement voluntary or involuntary?

- FBI agents were investigating the disappearance of a member of a drug organization in southern New Mexico. They learned that some in the organization felt defendant was a "loose end that had to be taken care of." FBI has a policy of alerting intended victims in cases like this and did so. Defendant said he wanted to cooperate. FBI agents told him they would notify the U.S. Attorney's office of his

cooperation. He confessed to the murder of the missing person.

Is the statement voluntary or involuntary? State v. Sanders (2000).

ANSWER:

This statement was voluntary. An offer to communicate a defendant's cooperation to the prosecutor did not represent wrongdoing by the FBI agents.

In the following situation is the statement voluntary or involuntary?

- Defendant was charged with criminal sexual penetration of a female inmate while he was a corrections officer at the Dona Ana detention center. The policies of the detention center required that an employee answer all questions truthfully or face termination. He signed a waiver of Miranda rights but did so because he felt his job was at stake. He admitted to having sex with an inmate.

Is the statement voluntary or involuntary?

ANSWER:

Court of Appeals suppressed the statement because it was involuntary. Government agencies can require employees to answer job-related questions or face termination. The statements, however, cannot be used in a criminal investigation. State v. Chavarria (2001).

In the following situation is the statement voluntary or involuntary?

- A five-year-old girl told her mother that Defendant had molested her. He went to the police station for questioning. After waiving his Miranda rights, the questioning began and lasted one to two hours. The officer repeatedly told Defendant he could get treatment if he confessed. His videotaped confession was used at trial. Is the statement voluntary or involuntary?

ANSWER:

This statement was voluntary. There was no promise, express or implied. Although the officer repeatedly said Defendant should confess in order to get treatment, he did not promise a **lesser sentence** nor did the officer imply Defendant would get treatment **instead** of prison. Court of Appeals affirmed conviction. State v. Lobato (2006).

In the following situation is the statement voluntary or involuntary?

- In Eddy County, Defendant had sexual images of children on his computer. A detective told defendant (express promise) that no matter what he said, he would not be arrested that night. The detective also said (implied promise), "If you have a problem, we can help you . . . I promise you, I will do everything I can to help you." State v. Leeson (2011). Voluntary or involuntary?

ANSWER:

Evidence of an express promise of leniency will render a confession involuntary as a matter of law. The detective made an express promise but Court of Appeals noted it was not a promise of long term leniency, only avoidance of jail that night. Since he wasn't going to be arrested, there was no incentive to make a statement. Incriminating statements were made but

Defendant was not arrested that night.

The implied promise might give the impression that Defendant would get treatment if he confessed, but there was no promise Defendant would get treatment instead of prison or a lesser sentence than imprisonment. Statement was admissible.

The standard in determining whether a statement is voluntary or not

- There must be “coercive conduct” by the police that overcame the defendant’s will.
- Coercion is a broad term that includes physical and psychological pressure.
- If no police coercion occurred, the statement will be voluntary.
- Be careful of promises: if an officer makes an express promise of leniency for a statement, that statement will be involuntary. Even an implied promise of leniency can cause difficulties.

Why are the courts so concerned about making sure a statement is voluntary?

- It may be because of our history. Police officers, especially in high profile cases, are under pressure to get a confession and solve a case. Too often, however, this is when some officers tend to “bend the rules” and use coercion.
- The problem with coercion, whether physical or psychological, in getting a statement is that the statement is not made because of the person’s free will but for some other reason. When that happens, the statement is presumed unreliable.

Some cases where the courts found coercion

The coercive nature of the tactics used in obtaining a statement must rise to a level where a suspect’s will is overborne. Coercive police activity is required for a confession to be involuntary. The following are examples where the courts found coercion:

- Threatening to arrest defendant’s mother unless he gave a statement.
- Deprivation of food or sleep.
- Questioned in a tiny room by numerous police officers for over eight hours before signing a confession written by police.
- A person was incarcerated for firearms violations but was also suspected of murdering his step daughter. He was told that in return for the truth about the murder, they would protect him from the other inmates.

Some cases where the courts found there wasn't coercion

The following are examples where the courts didn't find coercion:

- Encouraging defendant to tell the truth.
- Telling defendant his or her cooperation would be made known to the court.

Some helpful hints regarding voluntary statements

- Don't promise a suspect that you will help him or her for a confession.
- Does the suspect need to use the facilities? Is the suspect thirsty? These are concerns we need to look into.
- Can officers use deception during an interrogation? Actually, deception is not inherently coercive. For example, telling the suspect, falsely, that police have physical evidence against him or her (tire tracks, fingerprints, an eyewitness, a camera, etc.) is not coercive.
- But it does become coercive to make misrepresentations or use other tactics likely to make an innocent person confess. The court may find that the officer's misrepresentation "crossed the line" and induced the person to make a false confession.
- Juries, also, have a problem with deception. When an officer states on the stand that he or she lied to a suspect, the jury may wonder if the officer is now telling the jury the truth.
- One reason that the "voluntary" standard has been acceptable to law enforcement officers is that it is a high standard: a defendant must show there were coercive tactics sufficient to overcome his free or independent will.

THE FIFTH AMENDMENT: INTERROGATION AND MIRANDA RIGHTS

INTRODUCTION

Throughout history, suspects were forced to give statements. Sometimes it was staying in jail until one confessed; other times one was tortured. And that's why we have the Fifth Amendment: the right against self-incrimination. When suspects say, "I don't want to answer that question on the grounds it might incriminate me," it's known as "taking the fifth."

- No person "shall be compelled in any criminal case to be a witness against himself." - - - Fifth Amendment

One of the most important cases for officers to understand is Miranda v. Arizona (1966). Many questions are based on when Miranda rights have to be given:

- Do we read Miranda every time we come in contact with a suspect? (no)
- Does it apply to misdemeanors as well as felonies? (yes)
- Must Miranda be read at a routine traffic stop? (no)

We will review a number of cases, analyze them, and this will help us understand Miranda. You will be surprised, as you go to Court, at the confusion surrounding Miranda. One reason is that people get the legal standards of the Fourth Amendment and the Fifth Amendment mixed up. The legal standards follow:

Fourth Amendment - Not free to leave.

Fifth Amendment - Custodial interrogation.

MIRANDA WARNING: CUSTODIAL INTERROGATION

- Miranda warnings are required only when a **person in custody** is to be **interrogated**.
- This is the two prong test of Miranda: (1) custody and (2) interrogation.
- If either prong is missing, no need for warning!

Miranda Rights

- You have the right to remain silent.
- Anything you say can and will be used against you.
- You have the right to an attorney.
- If you cannot afford an attorney one will provided for you.

What does custodial interrogation mean?

To appreciate when to advise someone of their Miranda rights, we need to know what a custodial interrogation is. We can do this by trying to answer two questions while reviewing the following cases: (1) What does it mean to be “in custody” for purposes of Miranda, and (2) was there an interrogation?

Most of these cases will try to define what “in custody” means.

But first, a word of caution

If you’re uncertain if a person is in custody or not, it is recommended that you advise the person of their Miranda rights.

Miranda - SWAT

Facts:

Defendant killed a man in Albuquerque and then barricaded himself in a motel room. He was suicidal and armed with guns and explosives. SWAT was called out. At least twenty police officers, including a sharpshooter, surrounded the motel.

SWAT made repeated phone calls and shouted exhortations through a bullhorn. One officer said, "Why don't you tell me the story again. Start from the beginning." No Miranda rights were given. Defendant made numerous incriminating statements.

- Are these statements admissible? (yes)
- Was the defendant in custody? (no)
- Was this an interrogation? (yes)
- Is it necessary to read Miranda rights over the telephone? (no)

ANSWER:

Supreme Court said these statements were admissible and backed up SWAT. Miranda rights are required when there is a custodial interrogation. This is the type of interrogation conducted in an isolated environment controlled by the police. He was not in custody for Miranda purposes.

Also, it is not necessary to read Miranda rights over a telephone (since defendant is not in custody). State v. Cooper (1997).

Miranda - Police Car

Defendant killed victim in a remote area of a military installation. Nearly a year later FBI agents went to defendant's residence. Defendant agreed to be questioned away from the residence. They drove to an empty parking a few minutes' driving time away. Defendant was interrogated for one hour and forty minutes in the back seat of a police car.

Prior to entering the car, one agent told defendant he didn't have to go with them, did not have to talk with them, was free to leave at any time, and that they would bring him back to his residence after the interview. No Miranda rights were given. Defendant confessed to murder. He was taken back home. State v. Munoz (1999).

- Is this confession admissible? (yes)
- Miranda is required when there is a custodial interrogation.
This involves a two part question:
 - was defendant in custody? (no)

- was there an interrogation? (yes)
- Was Defendant's freedom of movement restrained to a "degree associated with formal arrest"? (no)

ANSWER:

Supreme Court of New Mexico held defendant was not in custody and therefore Miranda rights were not required. Miranda applies when a suspect's freedom of movement is restrained to a "degree associated with formal arrest." That was not the case here. Conviction for first-degree murder affirmed.

Miranda - Police Station

A male and female were killed by gunfire in a cabin near Torreon, New Mexico. The female's two young sons (ages two and four) were left in the cabin and eventually died of dehydration and starvation. The four bodies were found approximately four months later.

An Albuquerque Police Department detective interviewed defendant. The office was small, the door closed, defendant's back was to the wall of the office, and the detective was situated between Defendant and the doorway. No Miranda warnings were given. Defendant gave a statement and implicated himself in the murders. He was found guilty of four counts of felony murder in the first degree among other charges.

No Miranda rights? A murder confession at the police station? Another point: Defendant was asked and agreed to accompany police officers to the station, was free to leave or terminate the interview, and was provided transportation to and from the station.

- Were these statements admissible? (yes)
- Was defendant in custody? (no)
- Was there an interrogation? (yes)

ANSWER:

Supreme Court of New Mexico noted that the facts – small office, door closed, detective between defendant and the doorway – did not indicate a formal arrest or suggest that defendant's freedom was restricted to a degree consistent with a formal arrest. The interview was non-custodial and thus Miranda did not apply. State v. Nieto (2000).

Lesson learned:

According to the detective, had he read Miranda, there would have been no confession and no case. By creating a non-custodial situation, the detective obtained a valid confession.

Miranda - Being Flexible

A two-year-old boy was having trouble breathing. His foster father, in anguish, called 911 but rescue was unable to save him. Distraught, the father was given pills for depression. Two days later a detective interviewed him at the Farmington police station. He was told he was not under arrest, had no obligation to speak, and could stop the interview at any time. Miranda warnings were not given.

During the interview, lasting between two and three hours, he confessed to murder. A blanket had been used to suffocate the young boy. But the state still had to prove a homicide occurred. There must be, in addition to trustworthiness of a confession, some independent evidence of a criminal act.

Medical testimony and misleading statements he gave to others provided the independent evidence. His statement was deemed to be trustworthy. But will the statement be admissible?

ANSWER:

The jury, within one hour, found Defendant guilty of child abuse resulting in death. His sentence was life plus four years for two prior convictions. Supreme Court affirmed his convictions. In a non-custodial situation, Miranda warnings are not required. State v. Wilson (2010).

Lesson learned:

According to the detective, had he read Miranda, there would have been no confession and no case. By creating a non-custodial situation, the detective (Detective Dart) not only got a confession but one that was trustworthy.

The defendant also argued that he was not in an appropriate mental state (depression, pills, etc.) when he gave his statement. But the standard is not the defendant's mental state or that of the detective. In simple terms, the standard is this: would a reasonable (objective) person in defendant's shoes feel that he or she was in custody?

Miranda – Handcuffs

An officer in San Juan County was advised of a possible drunk driver leaving a casino. Upon contact with the defendant, he observed signs of intoxication. The defendant got out of his vehicle, began resisting, and was handcuffed. He wasn't arrested but he was put in the back seat of the patrol car. He gave incriminating answers to a number of questions.

- Was Defendant's freedom of movement restrained to a "degree associated with a formal arrest?"

ANSWER:

"In custody" for Miranda purposes occurs when there is a formal arrest or restraint on freedom of movement associated with formal arrest. To determine the latter, the court will ask whether a reasonable person in the defendant's position would have believed he or she was restrained to a degree associated with a formal arrest.

Court of Appeals felt a reasonable person in the defendant's position would have felt he or she was restrained to a degree with a formal arrest. Defendant was "in custody" for Miranda purposes and should have been given Miranda warnings. State v. Wilson (2007).

Miranda - Prison

Inmates in Estancia, New Mexico, decided to have some fun. They went over to another inmate who was sleeping and repeatedly stabbed him. The warden ordered a lock down and strip search. Fresh marks and bruises were observed on Defendant's back. Handcuffed, taken to the office of a Corrections Officer, the door was closed. The CO was not sure if the Defendant was the victim or the perpetrator. Without reading Miranda, he asked defendant about the incident. Defendant was not told he was free to leave. He admitted to stabbing the other inmate. State v. Lopez (2000).

- Should there be a different standard of "custodial interrogation" for inmates? (yes)
- Will his statement be admitted at trial? (yes)

ANSWER:

Court of Appeals found no custodial interrogation. An inmate has a higher standard. The question is whether the inmate is subjected to more restraints on his or her freedom than usual. True, Defendant was locked down and stripped searched, but so were all the others. He was handcuffed on the way to the door – but that always happens.

We do not have an atmosphere of coercion that overcame his free will and compelled him to confess. Nor was his freedom of movement curtailed to a degree associated with a formal arrest.

Miranda - Hospital

Defendant was driving from Roswell to Ruidoso when his pickup truck collided with a semi-truck. Severely injured, he was transported to the Lincoln County Medical Center. A state police officer talked to him for about seven minutes. He admitted being in possession of drugs. No Miranda warnings were given. We need to address the following two questions to see if his statements will be admissible:

First, we need to determine if the statement was voluntary.

He may have been in pain and in bad shape but his mental state was good. He responded coherently to the officer's questions and remembered many details. We also look at the officer. He did not threaten the defendant or promise special treatment in return for cooperation. He was polite, professional, and made sure the defendant understood his questions.

Second, should Defendant have been given Miranda warnings?

A custodial interrogation requires Miranda warnings. But there is a distinction between medical restraints and police-imposed limitations on freedom. He was not detained by the police, not handcuffed, nor was there any physical contact. The questions were asked in a public place.

Court of Appeals held that his statements were voluntary and that, at the time he made them, he was not in police custody and therefore not entitled to a Miranda warning. Conviction for possession of meth and careless driving was affirmed. State v. Lacouture (2009).

Miranda - Traffic Stop

A roadblock in Lea County, New Mexico. Defendant had a strong odor of alcohol and blood shot, watery eyes. Instead of a driver's license, he gave the officer a New Mexico identification card. He refused to take both the field sobriety test and the breath test. Upon refusal to take the field sobriety test he was arrested. There was no impaired driving. At this point it wasn't a strong case and therefore every statement by defendant became important.

He made a number of statements prior to arrest. When asked if he had been drinking, Defendant responded that he had two beers that night. Further questioning by the officer revealed he was driving with a revoked license. When asked to take a field sobriety test, he said "I'm not going to do nothing. Let's go to jail." Defendant wanted the statements declared inadmissible on the grounds he wasn't read his Miranda rights. State v. Sanchez (2001).

- Was there a custodial interrogation? (no)
- Are these statements admissible? (yes)

ANSWER:

It is well established that questioning of a motorist pursuant to a routine traffic stop does not constitute custodial interrogation. Defendant had not been arrested nor was he under the functional equivalent of arrest when the statements were made. Defendant had argued that he wasn't free to leave but that isn't the standard for Miranda.

Miranda - Vehicular Homicide

A snowy evening in Colfax (Raton) County, the highway slick and covered with ice. Defendant's vehicle was involved in a head-on collision with another vehicle. As police were talking to a witness, the Defendant interfered, trying to convince the witness that it was the driver of the other vehicle (now deceased) who had crossed the center line.

A second officer told Defendant he would be arrested for obstruction if he continued. This officer then put Defendant in the backseat of a patrol car and, with the doors closed and locked, left him there. The first officer returned and questioned Defendant about the accident. No Miranda warnings were given. Incriminating statements were made. State v. Snell (2007).

- Are these statements admissible? (no)
- Was Defendant's freedom of movement restrained to a "degree associated with a formal arrest"? (yes)

ANSWER:

Miranda warnings are not required for a routine traffic stop. The reason is that the motorist has reason to believe the detention will be brief. The questioning occurs in public view and there is nothing inherently coercive about it. But the Court of Appeals held that the officers' actions took this beyond a routine traffic stop.

The officers were right to remove Defendant from the scene of the witness interview. But their actions – threatening arrest, placing him in a locked police vehicle – upgraded this from a brief detention to a custodial interrogation. The statements were suppressed.

Miranda – Reasonable Person

State police investigated a murder case near Clayton, New Mexico. Suspect, a person of interest, contacted officers to talk with them. When officers met him, he got in their car, was handcuffed for officer safety, and driven to the District Attorney's office. He was escorted at all times. In a room with two officers, confronted with accusatory questions, he made a statement that led to a murder conviction. No Miranda warnings had been given. State v. Olivas (2011).

- Was he in custody? (yes)
- Will his statement be admissible? (no)

ANSWER:

Prior to arrest, how do we decide if a person is in custody? It isn't what the questioning officer or suspect may think. Instead, the courts ask: would a reasonable person in the suspect's position believe they are restrained to the point associated with being arrested.

To determine when custody begins, one needs to look at the totality of circumstances. Yes, the suspect had voluntarily agreed to meet with officers. But that's only one fact. Why was he handcuffed? Why the atmosphere of "we know you did it?" A reasonable person would believe he/she was being arrested or close to it. Court of Appeals held he was in custody, meaning Miranda warnings should have been given. Murder conviction overturned.

Lesson learned:

This could have been handled differently by not putting the suspect into a custodial situation. He didn't have to be in custody. He could have driven to the police station by himself. He could have been told, prior to questioning, that he was not under arrest, was free to leave, and could terminate the interview at any time. Had the officers done this, the result of this case would have been different.

HOW TO SET UP A NON-CUSTODIAL INTERVIEW

Some suggestions:

- Tell the person (it could be a suspect, a person of interest, or a witness) he or she is not under arrest.

- Tell the person he or she can leave at any time.
- Tell the person he or she can terminate the interview at any time.
- Do not handcuff the person.
- Do not make the person feel like he or she is in custody (Example: escorting the person when he or she goes somewhere (restroom break, cigarette break, etc.)
- Be careful of creating an atmosphere of “we know you did it.”

Miranda – Implied Consent

After failing field sobriety tests, Defendant was arrested and taken to Rio Rancho headquarters for a blood alcohol test. Before a test, however, the Implied Consent Act must be read. This Act states a driver in New Mexico has already approved – given implied consent – for a blood or breath test. A person can refuse but will be advised of the consequences. NMSA 1978, Section 66-8-107(B).

The Defendant, having been arrested, was in custody when the officer advised him about the Implied Consent Act. It is well established, of course, that a person in custody needs to be advised of Miranda warnings prior to giving a statement. He agreed to take the test. State v. Mazzei (2010).

- Should Miranda warnings have been given first? (no)
- Will the breath results be admissible? (yes)

ANSWER:

Miranda warnings are required when a statement is requested. But Miranda warnings are not required when requesting physical evidence, such as breath, blood, fingerprints, etc. The officer’s question was about a physical test, not a request for a statement. Court of Appeals said Miranda warnings did not apply.

Miranda - Juvenile

Police officers were dispatched to an apartment in Hobbs at 2:00 a.m. in response to a loud music complaint. Police knocked, heard “scuffling” inside, but twenty minutes went by before someone opened the door. Officers could smell marijuana and alcohol. Ten to fifteen individuals were inside along with empty beer cans.

The Child in this case, age fifteen, had an odor of alcohol on his breath or clothing. Officer had the Child step outside onto the stairway of the apartment where he asked the Child whether he had consumed any alcohol. The Child said two beers. The Child was not free to leave and the officer knew his questions were reasonably likely to elicit an incriminating response. He was given citations for curfew violation and minor in possession of alcohol. At trial the defense attorney moved to have this admission suppressed because Miranda warnings were not given.

State v. Javier M. (2001).

- Do juveniles differ from adults for Miranda purposes? (yes)

ANSWER:

The standard is different for juveniles

Courts use a two step analysis when it comes to an admission or confession. First, the court will decide if the statement was voluntary or not. Next, the courts will decide if Miranda warnings should have been given. In both instances, the state legislature has given more protection to juveniles.

How does the standard of a voluntary statement for a juvenile differ from an adult?

For an adult, a simple analysis will do. But for juveniles the intent of the state legislature is to make sure the statement is voluntary. Does the child really understand what is going on? In NMSA 1978, Section 32A-2-14 (E), which applies to children only, the Court is required to consider the following in deciding whether a child voluntarily waived his or her rights:

- The age and education of the child;
- Whether the child was in custody;
- The manner in which the child was advised of his or her rights. Police officers need to explain rather than just read Miranda rights;
- Length, circumstances, and time of day of questioning;
- Conditions of environment where questioning was conducted;
- Mental and physical condition of the child at the time of being questioned;
- Presence of attorney, friends or relatives at the time of being questioned.

NOTE: There is no requirement that a parent must be present.

Although statements are an essential part of an investigation, the state legislature is concerned about potential abuse when juveniles give statements to police officers.

How do Miranda warnings differ between adults and juveniles?

An officer does not have to read Miranda rights to an adult unless the person has been arrested or the functional equivalent of an arrest. Juveniles are treated differently. As soon as a juvenile is detained, he or she must be read the first two Miranda rights: (1) the right to remain silent and (2) anything you say can and will be used against you. Some call this situation a “mini-Miranda” or “Miranda-lite” or a modified Miranda.

Officers should have read the first two Miranda warnings once the juvenile was detained. Supreme Court of New Mexico suppressed the statement about the two beers.

Child – Waiver – Parents

Defendant, sixteen years old, knocked on a door in Farmington, New Mexico. When the door opened, he killed the person inside and stole his vehicle. He was apprehended in Las Vegas,

Nevada. Two San Juan County Sheriff's detectives interviewed him. He waived his Miranda rights. His mother was present but he asked her to leave. He confessed to the crimes. State v. Gutierrez (2011).

- Does a parent have to be present during a juvenile's interrogation?

ANSWER:

The presence of an attorney, friends or relatives when a child is questioned is a factor noted in the statute. But the presence of a parent or others is not required. There may be reasons for not having a parent present: the child, as here, may not want a parent present, the parent is unavailable, or the parent is a suspect.

Supreme Court held his waiver of Miranda was done knowingly, intelligently, and voluntarily. His sentence of life (thirty years) plus nineteen years was upheld.

Miranda – Child – Waiver

Honor among thieves? In Carlsbad, New Mexico, two juveniles committed a burglary. One juvenile was caught and named his friend (Child). They had been close friends before. Child was upset, believing "friends don't rat on friends" and decided something had to be done. He killed him.

A Carlsbad Police Officer went to Child's house to arrest him. The officer informed Child and his father he needed to speak to Child about recent events. Child's father asked if he needed to be present. The officer replied Child was sixteen and it was up to him.

At the police station, Child was read his Miranda rights, including the following:

- You have the right to call your parent(s), guardian, or custodian.
- You have the right to have your parent, guardian, or custodian or lawyer present during questioning.

Child signed the form. At no time did he ask to have his father or anyone else present. He confessed to murder. State v. Gamble (2012).

- When a juvenile is interrogated for murder, does a parent have to be present? (no)

ANSWER:

A number of factors determine if a juvenile's confession is voluntary; having a parent, guardian or custodian present is a factor but not mandatory. Supreme Court held confession was admissible. Child's sentence, sixty years, was also upheld.

Lesson learned:

The presence of a parent when a child is questioned is not required. Courts, however, will consider it, among other factors, in determining if a waiver of Miranda was knowingly, intelligently, and voluntarily made.

Miranda – Child (DWI)

In San Juan County, a sixteen-year-old Child (a legal term for those under the age of eighteen) was stopped for running a stop sign. Detecting the odor of burnt marijuana, the Child was given field tests which he failed. The Child was read the Implied Consent Act, given a blood test, and arrested for DWI. Miranda warnings were not given.

Failure to read Miranda can mean testimony (a statement or confession) is inadmissible. Miranda, however, does not apply to physical evidence: blood, fingerprints, hair samples, etc.

- Are the field tests, blood test results, and the consent to take those tests physical evidence or testimonial? (yes)

ANSWER:

Court of Appeals held evidence was physical, not testimonial. A field test is evidence of lack of motor coordination. Counting backwards or reading the alphabet is evidence of a person's physical condition. Consent to the Implied Consent Act is a simple yes or no answer and not testimonial. Evidence, being physical, was admissible. State v. Randy J. (2011).

Miranda - Juvenile (Pat-down)

Upon receiving a citizen's complaint that individuals were selling drugs, a Santa Fe police officer approached an adult and juvenile (seventeen-years-old) who matched the description. Both subjects were very nervous and wearing heavy clothing that could conceal weapons. While doing a pat-down search of the adult, the juvenile kept turning his body sideways as if preparing to attack.

Concerned for his safety, the officer decided to do a pat-down search of the juvenile. He asked the juvenile if he had syringes with needles on him. The juvenile said no but volunteered he had marijuana, and handed the Officer a plastic baggie. State v. Gerald B. (2006)

- The Child was detained . . . should the Officer have read Miranda prior to the pat down? (no)
- Will the marijuana be admissible? (yes)

ANSWER:

The question was not about criminal activity; it was an integral part of the search itself. Also, the Child volunteered he had marijuana. Court of Appeals held the marijuana bag was admissible.

Miranda - Foreign National

A Mexican national brutally killed three people. Two of the bodies were found in a motel room in Albuquerque, New Mexico. He and three others were arrested in Kansas while driving a

vehicle stolen from one of the victims. He was read his Miranda rights. He denied knowing anything about the murders and said he had never been in Albuquerque.

The statement about never being in Albuquerque came back to haunt him. His fingerprints and DNA (saliva on a beer can) placed him in the motel room. Defendant was convicted of three counts of first degree murder and other charges.

Defendant tried to get his convictions overturned because he was a foreign national. He cited an international treaty which provides that one nation should inform another when a foreign national is arrested. Defendant wanted his statement suppressed because he was not advised that he could confer with Mexican consular officials as provided by treaty. He argued that failure to inform him that he could contact the local consulate was similar to not advising him of his Miranda rights and his statement should not be used against him.

ANSWER:

Supreme Court noted that a treaty deals with matters of international relations, not domestic criminal law. It does not create a personal right that the defendant may enforce in court. Miranda warning was sufficient to admit his statement. State v. Martinez-Rodriguez (2001).

WHERE DOES THE CONFUSION ON MIRANDA COME FROM?

“not free to leave”

- Some attorneys believe that Miranda applies when the defendant is not free to leave. They may cite State v. Bramlett (1980) which held that where officer testified he would have “persuaded defendant to stay had he tried to walk away,” defendant was effectively in custody and entitled to be advised of his rights. This case was overruled by Armijo v. State (1987)

“focused on the accused”

- Some attorneys may cite State v. Greyeyes (1987) which noted that “the constitutional right of an accused to be informed of his or her right to remain silent attached once an investigation . . . has focused on the accused.” It notes later, however, that “the mere fact that police may have focused their investigation on a defendant at the time of the interview does not raise questioning to a level required to warrant Miranda warnings.”

“questions designed to elicit an incriminating response”

- State v. Cavanaugh (1994) noted: “interrogation occurs when an officer subjects an individual to questioning or circumstances which the officer knows or should know are reasonably likely to elicit an incriminating response.”

This argument is often made by defense counsel. Nonetheless, one should not overlook the obvious: was the interrogation with the suspect in a custodial situation?

- “An individual is subject to custodial interrogation when he lacks freedom to leave to an extent equal to a former arrest.” State v. Javier M. (2001).
- Investigative detention is not custody.

Miranda can be a confusing issue for many, including District Court Judges

- DEA agents asked Defendant to get off a bus and began questioning him. Incriminating statements were made. A district court judge ruled Defendant’s statements were inadmissible because he had been seized.
- The Court of Appeals noted: “We believe that the district court erred in concluding that, because Defendant was seized – without more by the police when he was asked to step off the bus, he was entitled to Miranda warning.
- Miranda warnings are only required when a person is subject to an interrogation while in police custody. Custody is defined as either (1) a formal arrest, or (2) a “restraint on freedom of movement of the degree associated with a formal arrest.”
- Although a person is seized for Fourth Amendment purposes whenever an officer “by means of physical force or show of authority, has in some way restrained the liberty of a citizen, not all Fourth Amendment seizures rise to the level of “custody” for Fifth Amendment purposes.”
- “Therefore, we agree with the State that the district court applied the wrong legal standard when it concluded that Defendant was entitled to Miranda warnings because Defendant was seized when he was taken from the bus. State v. McNeal (2007).

Lesson learned:

Custody, not focus of suspicion on the defendant, requires Miranda warnings.

Some helpful hints regarding Miranda

- You should repeat the warnings to a suspect after any significant delay in questioning.
- You should repeat the Miranda warnings even if the suspect has been warned by another officer who previously questioned him or her.

- If in doubt about whether a suspect is in custody or not, reading Miranda may help avoid courtroom motions and possible appeals.

Although officers can soon cite Miranda rights from memory, most read it from a card to avoid a challenge in court.

WAIVER

Reading Miranda is only part of it; there must also be a waiver

- A waiver means that a suspect freely, knowingly, and voluntarily decides to answer questions. Without being pressured, the suspect must clearly indicate he or she is willing to be questioned. Silence or shaking of the head is not sufficient.
- He or she must affirmatively waive their rights and be willing to answer questions.
- If a person does not wish to waive rights, questioning must cease.

Miranda - Waiver

FACTS:

After some good police work, a Defendant in Las Cruces was arrested for robbery. The detective started to read him his Miranda warnings. He had read three of the four warnings when Defendant interrupted and said he understood his rights. The detective then questioned him and Defendant admitted being involved in the crime. State v. Verdugo (2007).

- Is this a proper waiver of Miranda warnings? (no)

ANSWER:

Court of Appeals held that a suspect must be read all Miranda warnings before he or she can waive his or her rights. This rule applies even though a defendant interrupts and says that he or she understands their rights. The Miranda warnings were incomplete and Defendant's convictions were reversed. A new trial was ordered.

If a suspect appears wealthy, tell the suspect if they can't afford a lawyer, one will be provided. If the suspect is a lawyer, tell the suspect he or she can be provided with a lawyer.

FACTS:

Defendant waived his rights and gave a statement to an Alamogordo Police officer. During the interrogation, however, when asked about child abuse, Defendant said, "I don't think I should say anything else without seeing a lawyer." The officer asked whether he was referring to child abuse alone. Defendant replied, "Other things, we can talk about." Eventually he talked about child abuse as well. State v. Bailey (2008).

- Was the question of the officer proper? (yes)

ANSWER:

It was unclear whether the Defendant, thinking about getting a lawyer, wanted a lawyer. Some officers might have stopped asking questions. In this instance, however, the officer went a step further to find out what the Defendant wanted to do.

Court of Appeals held the question was proper. When it appeared that the Defendant was uncertain about what to do, the officer correctly asked for clarification.

Lesson learned:

The obligation to stop questioning when a suspect asks for a lawyer applies only when the request for a lawyer is clear.

Example: He answers questions for a while and suddenly says, “Maybe I should talk to a lawyer.” You are allowed to ignore this statement and continue to question him about the crime.

If, on the other hand, he says, “I want to talk to a lawyer” or something equally clear, you must stop the interrogation.

FACTS:

Defendant and another person went on a robbery crime spree in Albuquerque. After the robberies, going at a high rate of speed, running stop signs, they crashed into another vehicle. The driver of the other vehicle, a decent person, asked if he could help them. They took out a gun and killed him.

Defendant was advised of his Miranda rights and asked if he understood them. He replied, “I ain’t really got too much to say.” The detective followed up and asked, “Well, with the stuff that you do have to say do you mind talking to us about it?” Defendant responded, “Yeah, all right.” Upon signing a waiver he admitted shooting the other driver. State v. Perry (2009).

- Was this a good waiver? (yes)

ANSWER:

He argued his statement expressed a desire to stop questioning. This case illustrates how we need to listen carefully to what a defendant is saying. Did he indicate a wish to remain silent? Or did his response simply suggest he was not well informed.

Court of Appeals felt the waiver was good and affirmed his conviction. Often statements are made where a person has doubts but it isn’t a refusal to answer questions. His sentence is 75 years.

A person invokes Miranda rights but later wants to give a statement

FACTS:

His daughter was only six weeks old when she died of shaken baby syndrome. At the hospital, Las Cruces Police detectives asked Defendant and his wife to go to the police station. Defendant was given Miranda warnings and signed a waiver of rights form. After some questioning, he asserted his right to an attorney. The interrogation ended and the detective left the room.

Defendant, left alone in the interview room for about an hour, knocked on the door and said he wanted to “take the blame for it.” Miranda warnings were not re-read to him. Defendant admitted to recent abuse of his daughter. Will the statement be admissible?

- Once a person invokes his or her right to counsel, no further interrogation shall occur until counsel is available.
- But there is a qualification to this: unless the accused initiates further communication with an officer.
- Also, if a suspect is still aware of his Miranda rights when he resumes contact with an officer, there is no requirement to re-read Miranda warnings.

ANSWER:

Court of Appeals concluded that Defendant initiated contact, that there was no coercion, and he was aware of his Miranda rights when he initiated contact with the detective. His statement was admissible. State v. Quinones (2010).

Reading Miranda to an incarcerated person after a lapse of time

FACTS:

Police officers in Maryland felt a suspect had sexually abused his three-year-old son. When they questioned him, he invoked his Miranda rights. He was returned to his cell. Three years later, still in prison on other charges, he was questioned again. After making incriminating statements, he was found guilty. United States v. Shatzer (2010).

- Once a person invokes Miranda, is there a set period of time before officers can read Miranda to that person again? (yes, fourteen days)

ANSWER:

Supreme Court of United States held his statements were admissible. Even though the suspect was still incarcerated, there had been a “break in custody” between the first and second attempts at interrogation. Supreme Court created a rule that after a fourteen day “break of custody” – even though a person remains incarcerated – officers may question a suspect again.

Electronic Recording of Custodial Interrogations

- New Mexico requires recording of all custodial interrogations in felony cases when feasible. If conducted in a police station the recording shall be audio or visual or both, if available. NMSA 1978, Section 29-1-16.
- Recording must be done unless there is a reason not to do so. For example, electronic equipment may not be available or the equipment has failed and it’s not feasible to get replacement equipment. Also, the individual may refuse to be recorded.

- If a statement is not recorded, officers need to note the reasons why.
- Although only felony custodial interrogations have to be recorded, it is recommended that all custodial interrogations be recorded.

CUSTODY IS THE FIRST PART; WHAT ABOUT INTERROGATION?

There are two types of interrogation:

- Express questioning – an officer asks a question of an in-custody suspect about a criminal offense.
- Implied questioning – an officer does something that he or she knows is going to lead a suspect to respond in an incriminating way. Examples: showing autopsy photos of a victim or playing a recording of a confession of a co-conspirator.
- For a suspect in custody, Miranda warnings must be given if there is express or implied questioning.

Miranda rights have not been read. The suspect volunteers incriminating statements. Admissible?

Yes. A volunteered statement is admissible and doesn't require Miranda since there is no interrogation. Miranda is required when the person is in custody and subject to an interrogation. Officers do not need to interrupt a volunteered statement to give Miranda rights.

Lesson learned:

Since there is no interrogation, a volunteered statement is admissible.

When Miranda rights are not needed

- When there is not a custodial interrogation (adults).
- A person knows he or she can leave at any time.
- Routine traffic stop
- “on the scene” questioning, trying to determine what happened.
- “Booking desk” questions
- Undercover operations. The suspect is not “in custody.”

Additional issues regarding Miranda

What about routine questions at booking?

Routine questions, such as those at booking, are not considered interrogation.

Do Loss Prevention Officers or security guards have to read Miranda warnings?

No. The Fifth Amendment, as with other constitutional rights, applies to law enforcement officers or someone acting on their behalf.

An exception to reading Miranda warnings: Public Safety Exception

Miranda warnings can be waived when there is a concern for public safety or when there is a serious and immediate threat to the officer, the suspect or others.

Misdemeanor or felony

Miranda warnings do not depend upon the seriousness of the crime but whether or not a person is in custody. A person who has been arrested for a misdemeanor is in custody, just as if the arrest had been a felony.

THE SIXTH AMENDMENT: INTERROGATION AND THE RIGHT TO COUNSEL

INTRODUCTION:

The Fifth Amendment is concerned with interrogations that occur prior to someone being formally charged. The focus of the Sixth Amendment refers to what happens after someone is formally charged and their right to an attorney.

What do we mean by being formally charged?

The Sixth Amendment provides for an attorney at any critical stage of the prosecution. This occurs once someone has been formally charged. We're not referring to an arrest. Formally charged means the person has been before a Judge for a preliminary hearing, indictment, arraignment or information.

What is the difference if a person has been formally charged?

- Once formally charged, a defendant has a right to an attorney even if he or she isn't in custody.
- Recommend checking with your legal advisor for questioning a person who is incarcerated.

CONCLUSION

Interrogation is an important part of criminal investigation. Hopefully, we now have a better understanding of issues involving interrogation.

One troubling issue for officers has been when Miranda warnings are required to be given. For adults, the standard is custodial interrogation. For juveniles, the first two Miranda warnings need to be read when a juvenile is detained. We also need to make sure that statements are voluntarily given.